

Office of Chief Counsel
Internal Revenue Service
memorandum
DJWelch

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to: Sheldon Schwartz
National Director
Tax Forms and Publications Division T:FP

from: Rochelle Hodes *Rochelle Hodes*
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subject: Request for Technical Assistance on Sections 25A and 221
SPR-101239-98

This memorandum responds to your request for technical assistance dated January 13, 1997, on the rules for dependents for purposes of the Hope Scholarship and Lifetime Learning Credits under section 25A and for the deduction of interest on education loans under section 221 of the Internal Revenue Code.

The Taxpayer Relief Act of 1997 (Pub. L. No. 105-34, 111 Stat. 788) (TRA'97) created several new tax benefits for families who are saving for, or already paying, higher education costs or are repaying student loans. Specifically, section 201 of TRA'97 added section 25A to the Code creating the Hope Scholarship Credit and the Lifetime Learning Credit. In addition, section 202 of TRA'97 added section 221(c) to the Code allowing a deduction for interest paid on a qualified education loan.

Section 25A(a) provides, in general, that, if certain requirements are met, a taxpayer may claim either a Hope Scholarship Credit or Lifetime Learning Credit for the qualified tuition and related expenses of the taxpayer, the taxpayer's spouse, or an eligible dependent.

Section 25A(f)(1)(A) of the Code provides that the term "qualified tuition and related expenses" means the tuition and fees required for the enrollment or attendance at an eligible educational institution for course of instruction of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer "is allowed a deduction under section 151" at such institution.

Section 25A(g)(3) of the Code provides that if a deduction under section 151 with respect to an individual "is allowed to another taxpayer for the taxable year," no credit is allowed under section 25A to the individual.

another taxpayer for the taxable year," no credit is allowed under section 25A to the individual.

Section 221(a) of the Code provides, in general, that, if certain requirements are met, a taxpayer may deduct interest paid on a qualified education loan.

Section 221(c) of the Code provides that no deduction is allowed under section 221(a) to an individual if a deduction under section 151 with respect to such individual "is allowed to another taxpayer."

Section 221(e) of the Code provides that the term "qualified education loan" means indebtedness incurred to pay qualified higher education expenses which, among other things, are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred.

By using the word "allowed" in sections 25A(f)(1)(A), 25A(g)(3), and 221(c) of the Code, you ask whether Congress intended to deny these education tax benefits to an individual if another taxpayer is eligible to claim a dependency exemption deduction for the individual, regardless of whether or not the taxpayer claims the exemption. If Congress had intended to deny these education tax benefits in such a manner, it would have used the word "allowable" rather than "allowed." "Allowable" deductions are those available to a taxpayer whether or not they ~~are actually claimed on a tax return.~~ In contrast, "allowed" deductions are those actually claimed on a return. See Beyer v. Commissioner, 916 F.2d 153 (4th Cir. 1990).

In other contexts, the Code distinguishes between "allowable" deductions and "allowed" deductions. For example, section 1016(a)(2) requires an adjustment to the basis of property for the amount of depreciation "allowed" as deductions in computing taxable income ... but not less than the amount allowable under this subtitle or prior income tax laws." Further, as you point out, sections 32(c)(1)(A)(ii)(III), 63(c)(5), and 151(d)(2) specifically limit certain tax benefits to individuals for whom a dependency exemption deduction is "allowable" under section 151 to another taxpayer. By using the word "allowable" in these sections, Congress restricts certain tax benefits available to an individual if another taxpayer is eligible to claim a dependency exemption deduction for the individual, regardless of whether or not the taxpayer actually claims the exemption on his/her return. If Congress had intended to restrict the education tax benefits available to an individual under sections 25A and 221(c) in a similar manner, it would have done so by using the word "allowable" rather than "allowed." See also Notice 97-60, 1997-47 I.R.B. 8, Q&A:10.

The legislative history also reflects that Congress intended to deny these education tax benefits only if another taxpayer actually claims the dependency exemption deduction for the individual. Specifically, the legislative history to section 25A of the Code explains:

A taxpayer may claim the Hope Scholarship Credit [and the Lifetime Learning Credit] with respect to an eligible student who is not the taxpayer or the taxpayer's spouse (e.g., in cases where the student is the taxpayer's child) only if the taxpayer claims the student as a dependent for the taxable year for which the credit is claimed. If the student is claimed as a dependent by the parent or other taxpayer, the eligible student him- or herself is not entitled to claim a Hope Scholarship Credit or Lifetime Learning Credit for that taxable year on the student's own tax return. If a parent (or other taxpayer) claims a student as a dependent, any qualified tuition and related expenses paid by the student are treated as paid by the parent (or other taxpayer) for purposes of this provision.

See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 342-346 (1997).

Similarly, the legislative history to section 221 of the Code provides:

No deduction is allowed to an individual if that individual is claimed as a dependent on another taxpayer's return for the taxable year.

H.R. Conf. Rep. 220, 105 Cong., 1st Sess. 366 (1997).

Accordingly, we conclude that an individual can take an education tax credit or deduct student loan interest if another taxpayer is eligible to claim a dependency exemption deduction for the individual, provided the other taxpayer does not actually claim the exemption on his/her return. However, if the other taxpayer actually claims the exemption on his/her return, the individual can not take an education tax credit or deduct education loan interest.

If you need further assistance, please contact Donna Welch on 622-4910.